

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of

Comprehensive Review of Universal	)	
Service Fund Management,	)	WC Docket No. 05-195
Administration, and Oversight	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	
	)	
Schools and Libraries Universal Service	)	CC Docket No. 02-6
Support Mechanism	)	
	)	
Rural Health Care Support Mechanism	)	WC Docket No. 02-60
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109
	)	
Changes to the Board of Directors for the	)	CC Docket No. 97-21
National Exchange Carrier Association, Inc.	)	

**COMMENTS OF  
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## SUMMARY

CTIA commends the Commission for initiating this inquiry into the management and administration of the Universal Service Fund (“USF”), as well as the FCC’s oversight of the USF and the Universal Service Administrative Company (“USAC”). As a significant net contributor to the USF, the wireless industry strongly supports steps to improve the integrity of the universal service mechanisms. CTIA, therefore, appreciates the FCC’s efforts to simplify application, billing and collection, and disbursement processes as well as addressing carriers’ administrative concerns relating to USAC.

Administrative simplicity and greater transparency will improve the operation of the federal universal service mechanisms and reduce transaction, administrative, and enforcement costs for all those involved. The administrative complexity of the existing universal service system adds unnecessary costs and provides opportunities for abuse. The result of this administrative morass is a universal service system that may be ‘explicit’ in a technical (economic) sense, but certainly is not ‘explicit’ within the plain meaning of the requirement in Section 254(e) of the Communications Act of 1934, as amended. The existing federal universal service rules also are ambiguous for contributors to and beneficiaries of universal service. Universal service cannot be “predictable,” as required in the Act, when contribution and support amounts are contingent on interpretation of so many ambiguous and intricate rules and procedures – many of which are not formalized in any meaningful way. Accordingly, CTIA supports the following changes:

- The USAC Board of Directors should include equal wireless and wireline representation;

- Policy and procedural advice from the Commission to USAC should be made public and formalized;
- USAC management and administration should be subject to periodic reviews;
- USAC and the FCC should develop guidelines or best practices for fund applicants to reduce waste, fraud, and abuse;
- USAC should issue detailed invoices clearly stating how support and/or contribution amounts are derived as well as develop consistent procedures for truing up support amounts;
- The administrative complexity of the high cost universal service mechanisms should be significantly reduced by consolidating mechanisms, eliminating and/or consolidating unnecessary and/or redundant reporting obligations, and clarifying other procedures;
- Applying for schools and libraries and rural healthcare support should be a more formulaic, multi-year process in which applicants would be guaranteed funding over that time period;
- USAC should only collect its projected funding requirements for the upcoming calendar quarter and reimburse consumers for unnecessary past collections for the schools and libraries and other programs; and
- Targeted and random audits of both recipients and contributors are appropriate, but should be conducted in a fair and nondiscriminatory manner.

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**COMMENTS OF  
CTIA – THE WIRELESS ASSOCIATION®**

CTIA – The Wireless Association® (“CTIA”)<sup>1</sup> submits these comments in response to Federal Communications Commission’s (“FCC” or “Commission”) Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking requesting comment on ways to improve the management, administration, and oversight of the Universal Service Fund (“USF”).<sup>2</sup> CTIA supports the Commission’s commitment to ensuring that

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<sup>1</sup> CTIA – The Wireless Association® (formally known as the Cellular Telecommunications & Internet Association) is an international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the association covers Commercial Mobile Radio Service (“CMRS”) providers and manufacturers, including cellular, broadband PCS, ESMR, as well as providers and manufacturers of wireless data services and products.

<sup>2</sup> *In re Comprehensive Review of Universal Service Fund Management, Administration, and Oversight*, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, WC Dkt. No. 05-195, FCC 05-124 (June 14, 2005) (“*USF Reform NPRM*”).

the USF is administered in an effective, efficient, and competitively neutral manner. CTIA advocates administrative simplicity and transparency as means to improve the operation of the federal universal service mechanisms and reduce transaction, administrative, and enforcement costs for the FCC, the Universal Service Administrative Company (“USAC”), carriers, and (most importantly) consumers.

**I. REFORMS SHOULD BEGIN WITH THE GOVERNANCE AND PROCEDURES OF THE UNIVERSAL SERVICE FUND ADMINISTRATOR**

**A. The Administration and Management of USAC Should Reflect the Increased Role of the Wireless Industry**

With considerable growth of the wireless industry over the last decade, the administration and management of USAC needs to reflect the greater role wireless plays in USF contributions and support. In just the last year, the number of wireless subscribers increased from 160.2 million to 184.7 million with revenues increasing from \$87.6 billion to \$102.1 billion.<sup>3</sup> As a result of this growth, there are now more wireless subscribers than wireline switched access lines. This has translated to increased universal service contributions from the wireless industry, which now contributes about the same as the local exchange and interexchange carrier sectors.<sup>4</sup> Wireless carriers also

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<sup>3</sup> From 2004 to 2005, National penetration rate increased to 62%; the average minutes of use per subscriber per month increased to 580 minutes from 507. *In re Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, Tenth Report, WT Dkt. No. 05-71, FCC 05-73 (Sept 30, 2005) at ¶ 5. See also CTIA’s Semi-Annual Wireless Industry Survey Results January 1985 – June 2005, available at <http://files.ctia.org/pdf/CTIAMidYear2005Survey.pdf>.

<sup>4</sup> In 2004, wireless providers were responsible for \$1.9 billion or 32.6% of USF contributions. Fixed local service providers in 2004 contributed \$1.8 billion or 30.3% towards USF and interexchange carriers contributed \$2.2 billion or 37.1% towards USF. See Federal Communications Commission, *Trends in Telephone Service*, Tables 19.2 at 19-6, 19.17 at 19-22 (May 2004) (“*Trends in Telephone Service*”). Universal Service Administrative Company, 2004 Annual Report, at 27, available at <http://www.universalservice.org/Reports/>; See also Wireline Competition Bureau’s 2005 *Trends in Telephone Service* Report, available at <http://www.fcc.gov/wcb/iatd/trends.html>.

increasingly are recipients of universal service funding, although, taken as a group, wireless carriers continue to be significant net contributors to the USF.

In spite of these changes, there are still considerably more wireline representatives on the USAC Board of Directors than wireless representatives (6 to 1).<sup>5</sup> CTIA requests an increase in the number of wireless representatives and/or a reduction in the number of wireline representatives on USAC's Board of Directors to provide a more equal representation of the wireless industry's role in the USF and to ensure the Commission continues to meet its statutory requirement of providing universal service in a nondiscriminatory manner.<sup>6</sup>

**B. All Advice From the FCC to USAC on Points of Policy Should Be Made Public**

Under the Commission's Rules, USAC is prohibited from making policy, interpreting unclear provisions of statutes or rules, or interpreting Congressional intent.<sup>7</sup> Instead, USAC is required to seek guidance from the FCC.<sup>8</sup> However, there are no rules detailing the manner in which USAC is to petition the Commission for advice. This gap in procedure has allowed for informal advisory requests between USAC and the Commission and even direct policy decisions by USAC.<sup>9</sup> In some cases, this has resulted in USAC relying on informal advice from FCC staff on important issues of policy and

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<sup>5</sup> USAC Board of Directors consists of 19 members with one director representing CMRS providers. 47 C.F.R. §§ 54.703(b)(1-4).

<sup>6</sup> *Alenco Communications, Inc. v. Federal Communications Commission*, 201 F. 3d 608, 616 (5th Cir. 2000).

<sup>7</sup> 47 C.F.R. § 54.702(c).

<sup>8</sup> *Id.*

<sup>9</sup> *See General Communication, Inc., Request for Clarification of Clerical Changes and for Direction to USAC*, CC Dkt. 96-45 (June 29, 2005).

procedure – with significant financial consequences for both contributors and fund recipients.

The procedures by which USAC seeks policy advice from the FCC should be formalized so that interested parties may participate in a consistent manner. One option is for the Commission to put advisory requests it receives from USAC out for public comment. Another option would be for the FCC to establish expedited procedures for USAC to seek formal advice from the FCC on matters of policy (and in some cases procedure). In the absence of such expedited procedures, requests for advice from USAC could languish indefinitely. These steps will allow all participants in the USF to comment on important policy matters. Formal procedures, such as petitions for clarification or rulemaking, will create more efficient, effective, and competitively neutral administration of the USF. Formal procedures for consultation and advice also will reduce the inevitable, drawn out, and resource intensive conflicts that arise under the current system regarding informal, non-transparent advice from the FCC (and its staff) to USAC. Formalizing USAC and FCC policies and procedures also will reduce waste, fraud, and abuse by contributors and fund recipients.

### **C. The Commission Should Codify USAC Administrative Procedures and Subject Such Procedures to Periodic Review**

The cumbersome and complex nature of universal service administrative rules is a hindrance for small and large carriers alike. USAC is prohibited from adopting policy and thus relies on the FCC to set the administrative process. However, USAC has the expertise in the managing day-to-day operations of universal service and thus has an understanding of the needs for an efficient system. By codifying USAC's administrative procedures, the FCC can assist USAC in ensuring that the USF is administered in an

efficient and effective manner. Furthermore, codification of USAC administrative procedures will streamline and simplify the process, which will encourage better participation in the program, reduce ministerial errors, and increase the benefits derived from the USF.

In order for the Commission to continue to meet its statutory goals for universal service, USAC administrative procedures also should be reviewed on a regular basis (perhaps biennially). In carrying out this review, the Commission should develop specific performance measures for all universal service mechanisms to evaluate the extent to which statutory goals are being met.

## **II. ADMINISTRATIVE REFORM IS NECESSARY FOR THE IMPROVEMENT OF THE UNIVERSAL SERVICE FUND APPLICATION, DISBURSEMENT, AND CONTRIBUTION PROCESSES**

CTIA commends the Commission's efforts to consider modifications to its rules to ensure efficient, effective, and competitively neutral administration of the USF.<sup>10</sup> As CTIA pointed out in its previous comments, consumers – the only intended beneficiaries of the universal service provisions of the Act – will benefit most from universal service mechanisms that encourage and reward efficiency, eliminate arbitrary regulatory distinctions, and simplify administration.<sup>11</sup> The Commission's rules charge USAC with the responsibility of distributing universal service support funds.<sup>12</sup> To assist recipients in reducing waste, fraud, and abuse, the FCC and USAC should develop guidelines or best practices for fund applicants. USAC and the FCC should offer guidance on the

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<sup>10</sup> See *USF Reform NPRM* at n. 11.

<sup>11</sup> CTIA comments on *Rural Referral Public Notice*, CC Dkt. No. 96-45 (Oct. 15, 2004) (“CTIA comments”).

<sup>12</sup> 47 C.F.R. § 54.701(b).

application process and advise recipients to take a cost-effective approach to spending funds. Establishing best practices would advance USAC's mission to improve program integrity and applicant service.<sup>13</sup>

USAC and the FCC should eliminate ambiguity with regard to the billing, collection, and disbursement processes. CTIA recommends that USAC issue detailed invoices clearly showing how support and/or contribution amounts are derived. Carriers receive invoices without any explanation as to how the announced quarterly contribution factor was applied and receive remittance statements with no information on how the amount of support was determined. Disclosure of the calculations involved would also be useful for service providers that submit roughly 90,000 invoices each year.<sup>14</sup> USAC should also develop consistent procedures for truing up support amounts, including providing carriers an opportunity to challenge support adjustments. CTIA urges the Commission to provide carriers with detailed statements of receipts and outlays as a means to improve accuracy of the disbursement and contribution process as well as advance overall program integrity.

**A. Administrative Changes and Overall Fundamental Reform Are Necessary to Achieve Efficiency of the High Cost Universal Service Mechanisms**

The Commission has asked whether any rule changes are necessary to permit the high cost support mechanism to operate in a more efficient and effective manner.<sup>15</sup> As the largest of four primary programs, the high cost support mechanism is in need of an administrative overhaul to reduce administrative complexity for carriers. CTIA has pointed out in its previous comments that fundamental reforms to the existing high cost

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<sup>13</sup> USAC, 2004 Annual Report, at 11.

<sup>14</sup> USAC, 2004 Annual Report, at 13.

<sup>15</sup> See *USF Reform NPRM* at ¶¶ 46-47.

mechanism are necessary to achieve the universal service goals set forth in the Communications Act.<sup>16</sup>

### **1. CTIA Supports Changes to the Administration of the High Cost Mechanisms**

The Commission should consolidate high cost rules and modify reporting requirements. CTIA recommends that those portions of Part 36 and Part 54 of the Commission's Rules that pertain to high cost support should be consolidated to clarify rules and reduce uncertainty. With regard to high cost loop support, Part 36 of the Commission's Rules should be amended to require carriers to report investment and expense information directly to USAC, as opposed to reporting to the National Exchange Carrier Association ("NECA"). Under the current system, NECA processes the information and performs the calculations, but is not required to provide any supporting documentation to USAC. Carriers should report cost data directly to USAC which will enable USAC to exercise appropriate oversight responsibility. CTIA supports USAC's proposal and agrees that direct reporting will better facilitate audits and enforcement.<sup>17</sup> CTIA has recommended in its previous comments that USAC should replace NECA as a recipient of all necessary data for calculation of high cost support – essentially centralizing administration and eliminating unnecessary and costly administrative layers. Alternatively, if NECA continues to collect data, all data should be concurrently submitted to USAC and all NECA forms should be subject to FCC public notice and comment, and Office of Management and Budget approval.

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<sup>16</sup> See generally, Comments of CTIA – The Wireless Association™ on Joint Board High Cost Proposals, CC Dkt. 96-45 (Sept. 30, 2005) ("CTIA High Cost comments").

<sup>17</sup> See Letter from D. Scott Barash, Vice President and General Counsel, USAC to Irene Flannery, Chief, Accounting Policy Division, Common Carrier Bureau, FCC (Dec. 10, 1999).

The Commission also should streamline data collection requirements. CTIA advocates for a simplified certification process in which ETCs would only be required to submit one annual self-certification, not different certifications for the various high-cost mechanisms.<sup>18</sup> An annual self-certification that encompasses all high cost programs should be implemented in order to streamline the certification process. Likewise, filing and support time periods for all high cost support calculations should be consistent using a three-month lag.<sup>19</sup> Additionally, all ETCs should be required to report line count data in a consistent manner (*i.e.*, quarterly). Under the Commission's current rules, rural incumbents operating in areas with no competitive ETCs may report line counts on an annual basis.<sup>20</sup> Rural incumbents should not be allowed to take advantage of the time lag between annual filings and receive support for lines no longer served.

Additionally, CTIA asks the Commission to clarify that the place of primary use may be a substitute for a customer's billing address under section 54.307(b) of the Commission's Rules. In order to receive high cost support under 54.307(b), a competitive ETC must use the billing address of a customer to identify the customer's service location.<sup>21</sup> There are certain situations in which carriers do not have a billing address for a customer (*e.g.*, for prepaid customers). In such cases, the Commission should clarify that a carrier may use the place of primary use as a substitute for the billing address.

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<sup>18</sup> FCC rules currently require individual states to file annual certifications with the Commission by October 1 in order to be eligible for high cost loop, high cost model and local switching support (LSS). 47 C.F.R. §§ 54.313, 54.904(d), 54.809(c), 54.301(b). For interstate common line support and interstate access support, annual self-certification is required by June 30. 47 C.F.R. §§ 54.904(d), 54.809(c).

<sup>19</sup> Present rules dictate a six-month lag for high cost loop (9/30 filing captures 3/31 lines) (47 C.F.R. §§ 54.313, 54.903) while a three-month lag exists for interstate access support (9/30 captures 6/30 lines). 47 C.F.R. § 54.802(a).

<sup>20</sup> 47 C.F.R. § 54.307(c); 47 C.F.R. § 36.611-12.

<sup>21</sup> 47 C.F.R. § 54.307(b).

CTIA also urges quick action on its Petition for Reconsideration of unnecessary and discriminatory wireless ETC reporting requirements.<sup>22</sup> CTIA requested in its petition that the Commission reduce the five year planning requirement to 12-18 months, eliminate the requirement that wireless carriers report based on wireline networks, and eliminate redundant outage reporting requirements.

## **2. CTIA Supports Fundamental Reforms to the Underlying High Cost Universal Service Mechanisms That Will Decrease The Complexity of Universal Service Administration**

CTIA urges the Commission to initiate fundamental reforms to the underlying high cost universal service mechanisms that will decrease the complexity of universal service administration. CTIA recommends long and short term reform for high cost support. CTIA ultimately envisions a reformed mechanism that provides support for all eligible carriers based purely on the efficient, forward-looking economic costs of serving a geographic area.<sup>23</sup>

With regard to long-term reform, high cost universal service support should be transitioned from an inefficient system based on five different types of support to one mechanism that calculates support based on the most efficient technology.<sup>24</sup> Carriers, consumers, and the administrator will benefit from a unified system that will significantly reduce unnecessary costs and burdens associated with managing multiple mechanisms.<sup>25</sup> In the interim, larger “rural telephone companies” should be transitioned to the forward-looking high cost support mechanism. USAC, not the FCC, should manage operation of

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<sup>22</sup> *In re* Federal-State Joint Board on Universal Service, Petition for Reconsideration of CTIA-The Wireless Association<sup>TM</sup>, CC Dkt. 96-45 (June 24, 2005).

<sup>23</sup> CTIA High Cost comments at 19.

<sup>24</sup> *See* Reply Comments of CTIA – The Wireless Association<sup>TM</sup>, CC Dkt. 01-92 (July 20, 2005) at 12-14, 31 (“CTIA Intercarrier Compensation reply comments”).

<sup>25</sup> CTIA High Cost comments at 19.

the forward-looking high cost support mechanism and should be given the authority to collect the necessary data to update the model. USAC would replace NECA as the recipient of all necessary data for calculation of high cost support.<sup>26</sup> With the administration of high cost support centralized within USAC, USAC should also take responsibility from the FCC staff for managing the day-to-day operations of the forward-looking model while the Commission would retain its oversight powers over USAC activities and performance.<sup>27</sup>

CTIA also urges the Commission to make additional short-term reforms, such as requiring ILECs to combine study areas to correspond to their entire service territory within a given state.<sup>28</sup> Local switching support (“LSS”) should then only be available to high-cost carriers and their ETC competitors.<sup>29</sup> The FCC should reduce the threshold to qualify for LSS from 50,000 access lines in a state to a lower number and/or limit support to those incumbent LECs with higher than average switching costs.<sup>30</sup>

#### **B. CTIA Seeks Clarification Concerning Administration of the Low Income Mechanism**

The Commission should grant U.S. Cellular Corporation’s (“U.S. Cellular”) petition<sup>31</sup> concerning section 54.410 of the Commission’s Rules, which requires carriers

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<sup>26</sup> See *supra* II.A.1.

<sup>27</sup> See CTIA High Cost comments at 19.

<sup>28</sup> See *USF Reform NPRM* at n. 11.

<sup>29</sup> Under the current LSS mechanism for rural carriers, LSS support is triggered by the number of access lines served by a carrier, rather than the carrier’s actual switching costs. Only rural carriers serving 50,000 lines or less within a study area are eligible for LSS support. However, switching costs do not necessarily increase with smaller service territories and carriers with greater than 50,000 access lines may have higher than average switching costs but are ineligible for support. See *In re* Developing a Unified Intercarrier Compensation Regime, Initial Comments of the National Association of State Utility Consumer Advocates, CC Dkt. 01-92 (May 23, 2005) at 17-18.

<sup>30</sup> CTIA High Cost comments at iii.

<sup>31</sup> *U.S. Cellular Petition for Waiver and Request for Declaratory Ruling*, WC Dkt. 03-109 at 1 (June 17, 2005) (“*U.S. Cellular Petition*”).

to file sample lifeline verification data.<sup>32</sup> An ETC in a state with mandated Lifeline support is subject to that state's eligibility verification procedures.<sup>33</sup> U.S. Cellular asked the Commission to declare that it is legally sufficient for a carrier to follow the Commission's default rules for certifications and verifications, contained in section 54.410, if a state does not have its own rules.<sup>34</sup> Where a state does not have mandated Lifeline support, the Commission's default guidelines in section 54.410 apply. Similarly, where the state has mandated Lifeline support, but no verification procedures, the FCC's default guidelines should be legally sufficient. Clarification of this rule is necessary to ensure continued Lifeline support for otherwise qualified ETCs. CTIA supports U.S. Cellular's petition and asks the Commission to grant its proposal.

### **C. CTIA Supports Streamlining the Application Process for the Schools and Libraries Mechanism**

CTIA applauds the Commission's efforts to ensure that universal service is administered in an efficient manner free of arbitrary regulatory burdens. All efforts to reform the USF administration should be centered around encouraging and rewarding efficiency, which will ensure the greatest benefits to consumers – the intended beneficiaries of universal service. Modifications to the schools and libraries application process will help simplify the administrative process, reduce ministerial errors, and increase efficiency.

The schools and libraries applications should be revised to encompass a more formulaic multi-year process in which schools would be guaranteed funding over that

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<sup>32</sup> 47 C.F.R. § 54.410.

<sup>33</sup> See *In re Lifeline and Link-up*, Report and Order and Further Notice of Proposed Rulemaking, WC Dkt. 03-109, FCC 04-87 (Apr. 29, 2004).

<sup>34</sup> *U.S. Cellular Petition* at 4.

time period. It may be appropriate to initially make such streamlined procedures an option for smaller schools and libraries. The complexity of the universal service support applications is a deterrent for small and other schools and libraries that lack administrative resources and detracts from the USF's statutory goals. In a simplified system, support would be based on the category of support requested (*e.g.*, internal connections, internet access, or telecommunications service), size of the school, level of poverty, and the most efficient (least cost) technology available. In an increasingly technology diverse telecommunications marketplace, it no longer makes sense for policy-makers to support the maintenance of backward-looking, wireline-centric universal service mechanisms. In this environment of constant technological change, the current schools and libraries mechanism, which limits support to a list of supported services that can never, as a practical matter, be updated concurrent with changes in technology, runs the risk of forever condemning schools and libraries to more costly, last generation technologies.

A more formulaic funding mechanism will encourage schools and libraries to seek out the latest, most efficient technologies, while reducing the administrative burdens associated with the current application process. Once funds are dispersed, recipients would be given flexibility to spend funds within defined parameters and according to their needs. A categorical approach would reduce ministerial errors that lead to recurring appeal backlogs, while encouraging participation by smaller and needier schools and libraries, and increasing the public benefit of universal service.

A formulaic funding approach also will enable the FCC and USAC to eliminate the competitive bidding process and the need for a technology plan – thereby eliminating

two of the most frequent reasons for funding denials and resulting appeals. Much of the information contained on Forms 470 and 471 would be redundant and/or unnecessary under a streamlined application process. The competitive bidding procedures are cumbersome for small schools and libraries. Similarly, the requirement for a technology plan is a hindrance for small beneficiaries and would be superfluous under a streamlined procedure. Accordingly, the Commission should adopt a streamlined application process and eliminate these administrative burdens.

At the same time, the FCC's certification and enforcement procedures should be enhanced to ensure disbursements are spent appropriately. It would be counterproductive to create a more efficient system but allow for funds to be misappropriated through waste, fraud, or abuse. As discussed below, CTIA supports targeted and random audits for all support mechanisms under Commission guidelines designed to ensure non-discriminatory triggering of audits.

**D. CTIA Supports the Commission's Tentative Conclusion to Adopt a Streamlined Multi-Year Application Process for the Rural Healthcare Program**

CTIA also supports the Commission's tentative conclusion to adopt a streamlined multi-year application process for rural healthcare providers.<sup>35</sup> Any such process should operate along the same lines as the streamlined schools and libraries application process discussed above. A beneficiary would make a request for the category of support required and support amounts would be based on the size of the beneficiary and the type of funds requested. Beneficiaries ought to be given the flexibility to spend funds within defined

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<sup>35</sup> See *In the Matter of Comprehensive Review of Universal Service Fund Management, Administration, and Oversight*, Notice of Proposed Rulemaking, WC Dkt. No. 05-195, FCC 05-124, (June 14, 2005) at ¶ 58.

parameters and according to their needs. Given the size of the Rural Healthcare Mechanism, a streamlined application process is warranted.

### **III. THE COMMISSION SHOULD ENSURE THAT CONTRIBUTION OBLIGATIONS REFLECT FUNDING NEEDS**

CTIA recommends that USAC only collect its projected funding requirements for the upcoming quarter and reimburse consumers for unnecessary past collections of funds. Since its inception, USAC has collected considerably more than it has spent. At the end of fiscal year 2004, USAC carried a cash balance of \$3.4 billion – primarily from overcollecting funds for the schools and libraries program.<sup>36</sup> Although the Commission makes quarterly adjustments to the assessment rates charged to providers in an effort to keep the fund in balance, a significant lag exists between when the USAC commits funding for the schools and libraries program and when those funds are actually disbursed. For a variety of reasons (*e.g.*, failure to obtain matching funds, rule violations), a significant amount of schools and libraries funds are left in a form of universal service limbo – committed, but never spent. USAC collects to the schools and libraries fund cap each calendar quarter, but in no funding year has USAC actually spent to the schools and libraries cap.<sup>37</sup> Therefore, USAC should only collect from contributors its projected funding requirement for the upcoming quarter. After several years of schools and libraries fund administration, this amount should be readily discernable.

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<sup>36</sup> At the end of fiscal year 2004, the USF had \$3.4 billion in cash held outside the Treasury. *See* Congressional Budget Office, *Financing Universal Telephone Service*, (March 2005) at viii (“CBO Paper”).

<sup>37</sup> *See* CBO Paper at 11.

Further, USAC should “reimburse” consumers for unnecessarily high contribution factors by lowering contributions for a period of time.<sup>38</sup> CTIA notes that USAC took this step for a period of time under direction from the FCC, but stopped paying down this surplus fund under concerns that the Antideficiency Act applies to universal service funds.<sup>39</sup> In 2004, Congress and the President provided the USF a one-year exemption from the provisions of the Antideficiency Act.<sup>40</sup> There also are questions as to whether the Antideficiency Act applies to the FCC, USAC, and the USF.<sup>41</sup> As a result, USAC does not need funds on hand when making schools and libraries commitments, but clearly should ensure that it does have funds necessary to cover its revenue requirements in the upcoming calendar quarter.

#### **IV. THE COMMISSION SHOULD IMPLEMENT TARGETED AND RANDOM AUDITS FOR RECIPIENTS AND SUPPORTERS OF ALL UNIVERSAL SERVICE MECHANISMS**

Audits of receipts and outlays of universal service support deter intentional and inadvertent waste, fraud, and abuse, and thus promote the goals of the USF. However, the Commission must ensure that the USF is maintained in a non-discriminatory manner, and that administrative costs do not outweigh the benefits of participation.

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<sup>38</sup> A small reserve fund may be necessary to protect against potential fund shortfalls.

<sup>39</sup> Public Notice, *Proposed First Quarter 2005 Universal Service Contribution Factor*, DA 04-3902 (Dec. 13, 2004) at 2.

<sup>40</sup> 31 U.S.C. § 1341. In February 2005, the Senate introduced a bill (S.241) to permanently exempt the USF from Antideficiency Act compliance. Public Law 108-494.

<sup>41</sup> For example, one could argue that the Antideficiency Act does not apply to the USF because it is not “an appropriation or fund.” 31 U.S.C. § 1341. One could also argue that the Antideficiency Act does not apply to the FCC or USAC because the enforcement provision only applies to “an officer or employee of an executive agency or an officer or employee of the District of Columbia government.” 31 U.S.C. § 1351.

**A. To Ensure Universal Service is Operated in a Competitively and Technologically Neutral Manner, Audits Must Be Triggered By Objective Criteria**

While audits are necessary to ensure the integrity of the USF, the Commission is required to operate universal service in a non-discriminatory manner. There must be objective criteria for determining which contributors and recipients are chosen for targeted audits. Such criteria might include a certain percentage rise in funds requested in a given year or a certain threshold amount of support requested overall.

In conducting targeted and random audits, USAC should make a formal request for the Commission’s interpretation of ambiguous rules when evaluating carrier compliance with Commission rules. As discussed above, USAC does not have policy making power nor is it authorized to interpret unclear provisions of statutes or rules.<sup>42</sup> The Commission should clarify that the “seek guidance” language in section 54.702(c) requires USAC to make formal requests for the Commission’s interpretation of any ambiguous rules. This will allow all interested parties to participate and comment on matters of policy, further ensuring that audits are conducted in a non-discriminatory manner.

**B. Any Requirement for Independent Audits Should Be Paid Out of USF Contributions**

It is counterproductive to require schools, libraries, healthcare centers, and telecommunications carriers that are in need of support to pay for independent audits. To the extent that waste, fraud, and abuse of universal service funds are a concern, they are a concern for all fund contributors and recipients. It, therefore, makes more sense to

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<sup>42</sup> 47 C.F.R. § 54.702(c).

require all fund contributions and (indirectly) all fund recipients to share the costs of audits – especially when many of those audits are random.

Furthermore, if the Commission adopts a rule prohibiting intentional waste, fraud, and abuse, the Commission should differentiate between intentional and inadvertent non-compliance with its rules. As discussed above, a zero tolerance policy for compliance with universal service rules and procedures is inappropriate where ambiguous or complicated rules can be violated innocently and inadvertently. In addition, beneficiaries could be dissuaded from participation in the fund if they are subject to debarment for ministerial errors.

## CONCLUSION

CTIA commends the Commission's inquiry into ways to improve the management, administration, and oversight of the Universal Service Fund. The Commission should carefully consider CTIA's proposals when exploring the various methods to simplify the universal service application, collection, and disbursement processes. CTIA fully advocates administrative minimalism and transparency of the universal service rules as a means to improve the operations and deter waste, fraud, and abuse for the benefit of the FCC, USAC, carriers, and consumers.

Respectfully submitted,

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